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09/884,638	06/19/2001	Thomas E. Ricciardelli	2601.102	4310

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EXAMINER

TRAN A, PHI DIEU N

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/884,638

Applicant(s)

RICCIARDELLI, THOMAS E.

Examiner

Phi D A

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. The presence of process limitations on product claims, which product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. In re Stephen 145 USPQ 656 (CCPA 1965). It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

The above policy applies to claim 14.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claim 29 is rejected under 35 U.S.C. 102(e) as being anticipated by Oh et al (0039781).

Oh et al (figures 8, 10) shows an assembly of floor tiles having a plurality of polymeric bases (1, plastic, figure 1), each base having top and bottom surfaces and of substantially equal thickness, each base having first and second sets of adjoining edge portion (figures 10, 4a-4b) on the top and bottom surfaces, each set of adjoining edge portions adjoining one another at substantially right angles (figure 4a, the edge portions of numeral 3), the first set of adjoining

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edge portions having a top surface ( figure 10) substantially flush and contiguous with the top surface of the polymeric base, the second set of adjoining edge portions having a bottom surface ( figure 10) substantially flush and adjoining the bottom surface of the polymeric base, the first and second sets of adjoining edge portions having a thickness that is less than that of the adjoining portions of the base (figure 10, clearly so), first and second sets of interlocks ( the groove and tongue) that are molded into the first and second set of the edge portions, the first interlock sets disposed inwardly of the base edge and projecting downwardly from the first edge portion thereof ( figure 10, the left side), the second interlock sets disposed inwardly of the base edge and projecting upwardly from the second edge portion there ( figure 10, the right side), the first set of interlocks are beneath the top surface of the base and the second set of interlocks being above the bottom surface of the base, a decorative layer (104) applied to the top surface of the base for simulating an appearance that is different from that of the polymeric base.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 8-16, 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al in view of Wienand et al (3679531).

Oh et al (figures 1, 4c-4d, 8, 10) shows a floor tile having a flat elongated base (1) having a top surface, a bottom surface, a distal end (figure 1, the side with the numeral 3), a proximal

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end ( the opposite of distal end), the base being a polymeric material ( plastic), first and second opposite sides (the sides perpendicular to the ends) lying in respective first and second substantially parallel side planes, a longitudinal axis disposed between and substantially parallel to the side planes, a plurality of stepped edges (3, figure 10) formed on each of the distal and proximal ends of the base, each of the plurality of stepped edges formed by adjoining longitudinal and transverse edge portions (3, figures 4a, 4b), the longitudinal edge portion of one of the edge lying in a longitudinal plane inward of one of the side planes and extending substantially parallel thereto, the longitudinal edge portions of the opposite ones of the stepped edges lie in the same longitudinal plane whereby opposite stepped edges are in longitudinal alignment, first and second interlock surfaces (figure 10) on the base extending substantially parallel to each of the first and second sides, the first and second interlock surfaces on the base face inward, the interlock surface formed on the base of the end inwardly of the edges of the step edges ( figure 10), the distal end of the base being formed by a first, second, and third step ( figure 10), each step on the distal end of the base having a longitudinally aligned step on the proximal end of the base, the step staircase arrangement being inverted of that at the opposite end (figure 10), a decorative layer (figure 10, 103/200) attached to the top surface of the base, a wear-resistant layer (104) adhered to the top surface of the base, a wear-resistant layer (104) attached to the decorative layer (103/200), the decorative layer simulates the surface of a wooden floor (figure 8), a plurality of longitudinally extending parallel grooves (figure 4a-4b) on the top surface to simulate a plurality of boards (inherently so as they come together a gap still shown), each of the grooves being aligned with longitudinal edge portions of oppositely aligned step edges (figure 10).

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Oh et al does not show the base having a solid cross section.

Wienand et al shows a base having a solid cross section ( figures 3-4) being equivalent to a base with hollow cross section ( 5-6) in the art in forming interlocking panels.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Oh et al to show the base having a solid cross section because these two solid and hollow cross sectional bases were art-recognized equivalent at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute solid cross sectional base for hollow cross sectional base.

3. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al in view of Wienand et al (3679531) and further in view of Ruppel et al (6035928).

Oh et al as modified shows all the claimed limitations except for the interlock surface comprising a hermaphroditic interlock structures.

Ruppel et al shows an interlock surface comprising a hermaphroditic interlock structures.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Oh et al's modified structures to show the interlock surface comprising a hermaphroditic interlock structures because a hermaphroditic interlock structure is functionally equivalent to Oh et al's tongue and groove structure as they both function the same to interlock the tile together.

4. Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al in view of Wienand et al (3679531).

Oh et al as modified shows all the claimed limitations except for the material being recycled plastic. Oh et al discloses the material being plastic.

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It would have been obvious to one having ordinary skill in the art to show Oh et al's plastic being recycled plastic because using recycled plastic would ensure cheap and available material for the tile.

5. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh et al.

Oh et al shows all the claimed limitations except for the decorative layer on said top surface simulating a wood grain in each tile section.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Oh et al to show the decorative layer (104) simulating a wood grain in each tile section because it was known in the art that providing a decorative surface simulating a wood grain in each tile section would provide a pleasing appearance.

### ***Response to Arguments***

6. Applicant's arguments filed 10/9/02 to claims 26-27 have been fully considered but they are not persuasive. Applicant submits that Oh et al does not teach or suggest that plurality of tile sections being joined in parallel longitudinally staggered relationship to simulate the staggering of abutting elongated boards in a wooden floor installation, examiner respectfully disagrees. Oh et al figures 6, 10 shows the tile sections being joined in parallel longitudinally staggered relationship ( as shown by the protrusion on top of 101). The protrusion certainly can be interpreted as simulating the staggering of abutting elongated boards in a wooden floor installation. The argument is thus moot.

7. Applicant's arguments with respect to claims 1-25, 29 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different tile designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the



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organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A  
January 7, 2003

PA

LANNA MAI  
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